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COMPENSATION COMMISSION

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF "E1" CLAIMS

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List of claimants

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Elf Lubrifiants SA	"Elf"
Van der Sluijs Handelsmaatschappij	"Van der Sluijs"
Mutraco Havenservice	"Mutraco"
Petrolexportimport S.A.	"Petrolexportimport"
Orient Catalyst Co., Ltd	"OCC"
Anchor Fence, Inc.	"Anchor Fence"
Caltex Petroleum Corporation	"Caltex"
Arabian Drilling Company	"Arabian Drilling"
Alhuseini Corporation	"Alhuseini"
Saudi Automotive Services Company	"Saudi Automotive"
Idemitsu Kosan Co., Ltd.	"Idemitsu"

List of currencies

Name	Defined
French franc	FRF
Japanese yen	JPY
Kuwait dinar	KD
Netherlands guilder	NLG
Romania leu	ROL
Saudi Arabian riyal	SAR
United States dollar	US$

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Introduction

1. This is the fourth report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review oil sector claims submitted by corporations, other private legal entities and public-sector enterprises (category "E1" claims) pursuant to article 38(e) of the Provisional Rules for Claims Procedure[1] (the "Rules").

2. This report contains the determinations and recommendations of the Panel with respect to the fifth instalment of E1 claims, comprising 11 claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules (the "fifth instalment").

3. The fifth instalment claims were filed by non-Kuwaiti companies operating in the oil sector. The claimants in this instalment typically advance loss elements arising from the disruption of their business and the destruction or theft of assets used in that business.

4. The claimants in the fifth instalment are as follows:

Table 1. Summary of claimants

Name of claimant	Submitting Government	UNCC claim No.
Elf Lubrifiants SA	France	4001834
Van der Sluijs Handelsmaatschappij	Netherlands	4001570
Mutraco Havenservice	Netherlands	4001395
Petrolexportimport S.A.	Romania	4001245
Orient Catalyst Co., Ltd	Japan	4000960
Anchor Fence, Inc.	United States	4002489
Caltex Petroleum Corporation	United States	4000595
Arabian Drilling Company	Saudi Arabia	4002829
Alhuseini Corporation	Saudi Arabia	4002555
Saudi Automotive Services Company	Saudi Arabia	4002454
Idemitsu Kosan Co., Ltd.	Japan	4000982

5. A number of fifth instalment claimants have sought compensation for claim preparation costs and interest on amounts claimed. As these issues are dealt with separately (see paras. 172-177, infra), the body of this report deals with the claims net of interest and claim preparation costs. The original and net amounts claimed in the fifth instalment are summarized as follows:

Table 2. Summary of claims

Claimant		Gross Claim	Preparation Cost	Interest	Net Claim
Elf Lubrifiants	(FRF)	174,085	0	0	174,085
Van der Sluijs	(US$)	1,037,000	0	0	1,037,000
Mutraco	(NLG)	64,410	0	not specified *	64,410
Petrolexportimport	(US$)	2,729,204	0	0	2,729,204
	(ROL)	2,027,716,177 **		0	2,027,716,177
Orient Catalyst	(JPY)	215,700,906	0	0	215,700,906
	(US$)	86,531			86,531
Anchor Fence	(US$)	172,315	0	0	172,315
Caltex	(US$)	201,926	0	0	201,926
Arabian Drilling	(US$)	53,334	0	0	53,334
Alhuseini	(US$)	2,800,000		to be determined ***	2,800,000
	(SAR)		29,000		
Saudi Automotive	(SAR)	5,678,970	17,720	to be determined ***	5,661,250
Idemitsu	(JPY)	13,366,390	0	0	13,366,390
Totals	(US$)	7,080,310	0	0	7,080,310
	(ROL)	2,027,716,177	0	0	2,027,716,177
	(JPY)	229,067,296	0	0	229,067,296
	(NLG)	64,410	0	0	64,410
	(FRF)	174,085	0	0	174,085
	(SAR)	5,678,970	46,720	0	5,661,250

* Mutraco claims an unspecified amount of interest on the "E" claim form it filed with the Commission.

** Petrolexportimport claims that this amount represents "bank interest regarding A.M. contract". Because the claimant has not provided a detailed description or evidence with respect to this loss element, it is not clear whether it represents a claim for interest on any award made by the Commission. Accordingly, the loss element is presented here only as part of Petrolexportimport's gross claim.

*** Alhuseini and Saudi Automotive claim for interest on their losses but do not specify a monetary amount. Instead, they state that they leave the calculation of their interest losses to the Commission. In so doing, however, they claim that the rate of interest to be employed should be greater than 5.8 per cent and sufficient to compensate them for their "probable marginal cost of borrowing".

6. In this report, the Panel has prepared a claim summary chart for each claimant, which appears at the conclusion of the Panel's assessment of each claim. Where claimants have advanced claims in currencies other than United States dollars, the Panel has converted recommended compensation awards into United States dollars in the claim summary charts, based on the approach outlined in paras. 168-171, infra.

I. PROCEDURAL HISTORY OF THE CLAIMS

7. The secretariat of the Commission (the "secretariat") commenced a detailed preliminary assessment of the fifth instalment claims in October 1998. As a result of this review, a number of formal deficiencies in the claim files were identified, as were a number of areas where further documentation or information would clearly be required from the claimants. Accordingly, detailed notifications with respect to these deficiencies were issued to each of the claimants in the fifth instalment pursuant to article 34 of the Rules (the "article 34 notifications") on 2 November 1998.

8. As a number of the loss elements in the fifth instalment involved issues where technical advice was considered useful, the services of certain loss adjusting and accounting experts were retained to assist the Panel in its review and evaluation of the claims.

9. The Panel issued its first procedural orders relating to the fifth instalment on 20 May 1999. In most cases, these procedural orders contained interrogatories addressed to the fifth instalment claimants, seeking further evidence and explanation. These interrogatories were prepared by the Panel based on its review of the claims, with the assistance of the expert consultants. The procedural orders set a deadline of 21 July 1999 for responses to the interrogatories.

10. At the direction of the Panel, copies of the procedural orders, with the attached interrogatories, were sent to the Government of the Republic of Iraq ("Iraq").

11. After reviewing the claims, the claimants' responses to the article 34 notifications and the claimants' responses to interrogatories, the Panel directed its expert consultants to prepare a preliminary report for each of the fifth instalment claims outlining their opinion on the appropriate valuation of compensable claim elements. The Panel reviewed these preliminary reports and provided further instructions to the consultants as necessary. The consultants then prepared final reports that assisted the Panel in performing its work and making the recommendations outlined in this report.

II. LEGAL FRAMEWORK

A. Applicable law and criteria

12. The law to be applied by the Panel is set forth in article 31 of the Rules, which provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

B. Liability of Iraq

13. According to paragraph 16 of Security Council resolution 687 (1991), "Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage,... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". The Panel notes that, when adopting resolution 687 (1991), the Security Council acted under Chapter VII of the Charter of the United Nations, which permits it to exercise its powers under that Chapter to maintain and restore international peace and security. The Security Council also acted under Chapter VII and under Article 29 of the United Nations Charter when adopting resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Given these provisions, the issue of Iraq's liability for losses falling within the Commission's jurisdiction is resolved by the Security Council and is not subject to review by the Panel.

14. The Governing Council has given some further guidance on what constitutes a "direct loss, damage or injury" for which Iraq is liable under Security Council resolution 687 (1991). Paragraph 21 of Governing Council decision 7 is the seminal rule on "directness" for claims filed on behalf of corporations and other legal entities (category "E" claims), and it provides, in relevant part, that compensation is available:

> "... with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."[2]

15. The list of possible causes of "direct loss" in paragraph 21 is not exhaustive and leaves open the possibility that there may be causes other than those enumerated. Decision 15 of the Governing Council confirms this: "[t]here will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait". Should that be the case, the claimants will have to show that a loss that was not suffered as a result of one of the five categories of events in paragraph 21 is nevertheless a "direct" result of Iraq's unlawful invasion and occupation of Kuwait.[3]

16. While the language "as a result of" contained in paragraph 21 is not defined further in decision 7, Governing Council decision 9 provides guidance as to what may be considered to constitute "losses suffered as a result of" Iraq's unlawful invasion and occupation of Kuwait.[4]

17. Thus, decisions 7 and 9 provide guidance to the Panel as to how the "direct loss" requirement must be interpreted. It is against this background that the Panel will examine the claims discussed in this report to determine whether, with respect to each, the requisite causal link - a "direct loss" - is present.

C. Evidentiary requirements

18. Article 35(1) of the Rules provides general guidance on the submission of evidence by a claimant:

"Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)."

19. Pursuant to article 35(3) of the Rules, claims of corporations and other entities must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss. The Governing Council has made it clear that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for compensation to be awarded.[5]

20. All corporations filing category "E" claims were required to submit with their claim forms "a separate statement explaining its claim ('statement of claim'), supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss".[6] In addition, claimants were instructed to include in the statement of claim the following particulars:

> "(a) The date, type and basis of the Commission's jurisdiction for each element of loss;
>
> (b) The facts supporting the claim;
>
> (c) The legal basis for each element of the claim;
>
> (d) The amount of compensation sought, and an explanation of how this amount was arrived at."[7]

21. Where claimants have submitted a statement of claim meeting the Commission's requirements and the statement is supported by documentary or other appropriate evidence, article 35(1) of the Rules requires the Panel to "determine the admissibility, relevance, materiality and weight" of such evidence. In so evaluating the evidence before it, the Panel must determine whether it is sufficient to demonstrate the circumstances and amount of the claimed loss.

22. The Panel notes that several of the fifth instalment claimants filed their claims without a statement of claim or documentary evidence sufficient to demonstrate the circumstances and the amount of the claimed loss. These claimants were asked, in both the article 34 notifications and the Panel's procedural orders, to provide the required information and evidence, but did not do so. Pursuant to article 9 of the Rules, the article 34 notification and the procedural orders were sent to the claimants through the Permanent Missions to the United Nations Office in Geneva of their Governments.

III. CLAIM OF ELF LUBRIFIANTS SA

23. Elf Lubrifiants SA ("Elf") is a publicly-held corporation organised under the laws of France that produces and distributes petroleum-based lubricants.

24. Elf claims that on 2 August 1990 it held legal title to 26.695 tons of marine lubricants (the "lubricants") that were being stored by Kuwait Oil Tanker Co. S.A.K. ("KOTC") on behalf of Elf in Kuwait; KOTC was Elf's agent in that country. The lubricants were intended to be provided to vessels in Kuwaiti ports pursuant to existing supply contracts. Elf claims that Iraqi forces stole or "very badly damaged" the lubricants during their occupation of Kuwait and seeks compensation in the amount of FRF 174,085 for the resulting loss. Elf's claim is as follows:

Table 3. Elf net claim

Loss element			Claim
Other tangible property		(FRF)	174,085
	Total	(FRF)	174,085

25. In support of its claim, Elf has provided its agency contract with KOTC and an inventory report showing lubricants owned by Elf that were being stored by KOTC on behalf of Elf at the end of July 1990. In addition, Elf has provided a letter from KOTC dated 30 September 1991 stating that the lubricants "were stolen by the Iraqis during the invasion and the remaining items are not usable as they are badly damaged".

26. The Panel finds that the evidence provided proves that the lubricants were being stored by KOTC on behalf of Elf on the date of Iraq's invasion of Kuwait and were stolen or spoiled during the occupation of Kuwait.

27. However, despite requests from the Panel, Elf has not provided documentary evidence, such as supply contracts or invoices with respect to past sales, of the prices it charged for lubricants at the time of Iraq's invasion of Kuwait. Instead, it has provided a list of the prices, stated in United States dollars, of the several types of lubricants that were being stored by KOTC at the time of Iraq's invasion of Kuwait. The list states the total value of the lubricants as US$30,541.

28. To obtain corroboration of the prices listed by Elf, the Panel has, with the assistance of its consultants, referred to prices charged at that time by other suppliers of marine lubricants. These confirm that the prices listed by Elf correspond to the retail prices of the lubricants.

29. However, the Panel notes that the storage agreement between Elf and KOTC indicates that Elf usually provided lubricants to vessels pursuant to long-term supply contracts. Because sales under such contracts are usually made at a discount to retail prices, the Panel finds that the prices listed by Elf should be decreased by approximately 5 per cent for the purpose of the valuation of this claim.

30. Accordingly, the Panel finds that Elf incurred a loss of US$29,000 as a result of Iraq's unlawful invasion and occupation of Kuwait and recommends that compensation be awarded in that amount. Although Elf set forth its claim in French francs, the Panel's recommended award is stated in United States dollars because the lubricant prices are stated in that currency. The recommendation of the Panel is therefore as follows:

Table 4. Elf recommended compensation

Loss element		Claim	Recommendation
			(US$)
Other tangible property	(FRF)	174,085	29,000
Total	(FRF)	174,085	29,000

IV. CLAIM OF VAN DER SLUIJS HANDELSMAATSCHAPPIJ

31. Van der Sluijs Handelsmaatschappij ("Van der Sluijs") is a private limited liability company organised under the laws of the Netherlands. Van der Sluijs describes itself as a wholesale trader of light refined oil products; its clients are principally resale agents in the Netherlands, Belgium and Germany. Van der Sluijs also provides transport services in connection with its trading operations.

32. Van der Sluijs claims that it incurred losses in the amount of US$ 1,037,000 as a result of increases in the price of oil that followed Iraq's invasion and occupation of Kuwait. Its claim is composed of three loss elements. First, Van der Sluijs claims that higher oil prices increased the cost of preserving its stock of oil products at desired levels, thereby causing it to incur US$172,000 in additional financing costs. Second, prior to Iraq's unlawful invasion of Kuwait, Van der Sluijs entered into a fixed-price contract to deliver a certain quantity of oil products in December of 1990. Van der Sluijs claims that higher oil prices caused the cost of performance of this obligation to increase by US$850,000. Third, Van der Sluijs claims that, due to higher diesel prices, the cost of operating its fleet of trucks increased by US$15,000. The amounts claimed are summarized as follows:

Table 5. Van der Sluijs net claim

Loss element			Claim
Financing costs		(US$)	172,000
Contract loss		(US$)	850,000
Fuel costs		(US$)	15,000
	Total	(US$)	1,037,000

33. In support of its claim, Van der Sluijs has provided data with respect to market prices and stocks of oil products, data with respect to interest rates and the diesel requirements of the claimant's fleet of trucks, documentation with respect to the fixed-price contract to deliver oil products and a brochure describing Van der Sluijs' operations.

34. Security Council resolution 687 and Governing Council decisions 7 and 9 limit Iraq's liability to losses that occurred as a "direct" result of its unlawful invasion and occupation of Kuwait. In the Panel's view, there is no direct causal link between the losses suffered by Van der Sluijs and Iraq's unlawful invasion and occupation of Kuwait. Rather, the losses are of an indirect character and identical in nature to the increased costs experienced by all consumers of oil products throughout the world as a result of increases in the world price of oil following Iraq's unlawful

invasion and occupation of Kuwait and the imposition of the United Nations trade embargo pursuant to resolution 661 (1990). Such indirect losses are not, therefore, compensable.

35. Accordingly, the Panel does not need to consider further the evidence provided by Van der Sluijs. The recommendation of the Panel is summarized as follows:

Table 6. Van der Sluijs recommended compensation

Loss element		Claim	Recommendation
			(US$)
Financing costs	(US$)	172,000	0
Contract loss	(US$)	850,000	0
Fuel costs	(US$)	15,000	0
Total	(US$)	1,037,000	0

V. CLAIM OF MUTRACO HAVENSERVICE

36. Mutraco Havenservice ("Mutraco") was a sole proprietorship organized under the laws of the Netherlands that provided provisioning and courier services to vessels in the port of Rotterdam.

37. Mutraco claims that prior to Iraq's invasion of Kuwait it entered into a contract with Van Ommeren Transport B.V. ("Van Ommeren"), a shipping agent, to provide provisioning services in the port of Rotterdam to oil tankers arriving from Kuwait. These services were to be provided as ordered by Van Ommeren, pursuant to separate work orders. Mutraco states that Iraq's unlawful invasion and occupation of Kuwait interrupted the oil tanker traffic between the port of Rotterdam and Kuwait. As a result, Mutraco claims that it incurred NLG 64,410 in lost profits and seeks compensation in that amount. Mutraco's claim is summarized as follows:

Table 7. Mutraco net claim

Loss element			Claim
Loss of profits		(NLG)	64,410
	Total	(NLG)	64,410

38. In support of its claim, Mutraco has provided a letter from Van Ommeren stating that during Iraq's occupation of Kuwait it had not required Mutraco's services, a letter from a firm of accountants describing Mutraco's decline in business, certain documentation with respect to fixed costs incurred by Mutraco during Iraq's occupation of Kuwait and a brochure describing Mutraco's operations.

39. Security Council resolution 687 and Governing Council decisions 7 and 9 limit Iraq's liability to losses that occurred as a "direct" result of its unlawful invasion and occupation of Kuwait. In reply to a question from the Commission, Mutraco has stated that the claimed loss related to services that were provided exclusively in the Netherlands. Therefore, the claimed loss did not arise from operations by Mutraco in the geographic area of conflict. In the Panel's view, this confirms that Mutraco's claimed losses did not occur as a direct result of Iraq's unlawful invasion and occupation of Kuwait. The Panel therefore concludes that these losses are not compensable.

40. Accordingly, the Panel does not need to consider further the evidence provided by Mutraco. The recommendation of the Panel is summarized as follows:

Table 8. Mutraco recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Loss of profits	(NLG)	64,410	0	0
Total	(NLG)	64,410	0	0

VI. CLAIM OF PETROLEXPORTIMPORT S.A.

41. Petrolexportimport S.A. ("Petrolexportimport") filed a category "E" claim form with the Commission through the Government of Romania, in which it described itself as a public-sector enterprise with operations in the petroleum business. Petrolexportimport did not submit a statement of claim or any evidence with its category "E" claim form.

42. Based on the category "E" claim form, Petrolexportimport's claim can be summarized as follows:

Table 9. Petrolexportimport net claim

Loss element			Claim
Contract losses		(US$)	2,729,204
Bank interest		(ROL)	2,027,716,177
	Totals	(US$)	2,729,204
		(ROL)	2,027,716,177

43. In the article 34 notification issued to Petrolexportimport, a number of deficiencies of this claim were noted, including the absence of a statement of claim and an absence of supporting evidence. Petrolexportimport was requested to correct these and certain formal deficiencies by 6 January 1999. The Commission has received no response to this request.

44. The Panel issued an interrogatory to Petrolexportimport with its Procedural Order of 20 May 1999; the Claimant was directed to respond to the questions in the article 34 notification by 21 July 1999. The Commission has received no response to this request.

45. The Panel finds that there is no evidence to support Petrolexportimport's claim. Accordingly, the Panel recommends that no compensation be awarded with respect to this claim. The recommendation of the Panel can be summarized as follows:

Table 10. Petrolexportimport recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Contract losses	(US$)	2,729,204	0	0
Bank interest	(ROL)	2,027,716,177	0	0
Totals	(US$)	2,729,204	0	0
	(ROL)	2,027,716,177	0	0

VII. CLAIM OF ORIENT CATALYST CO., LTD

46. Orient Catalyst Co. Ltd ("OCC") is a closely-held corporation organized under the laws of Japan that produces catalyst for use in petroleum refineries.

47. OCC seeks compensation in the amount of JPY 215,700,906 and US$86,531 for losses incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. OCC's claim is summarized as follows:

Table 11. OCC net claim

Loss element			Claim
Interest losses		(JPY)	179,245,997
Non-interest losses			
Additional shipping costs		(US$)	86,531
Storage costs		(JPY)	29,152,879
Catalyst stored in Kuwait		(JPY)	7,302,030
	Totals	(US$)	86,531
		(JPY)	215,700,906

A. Interest losses

48. Orient Catalyst claims that, prior to Iraq's invasion of Kuwait, it received two purchase orders (the "purchase orders") from KNPC requesting delivery to Kuwait of 4,686 cubic meters and 12,000 cubic feet of catalyst. The catalyst was scheduled to be sent from Japan by sea in four shipments between March and September of 1990. Payment for each shipment was to occur 50 days after its shipment date.

49. The first shipment of catalyst was delivered to KNPC and paid for prior to Iraq's invasion of Kuwait. The second shipment (denominated "S-2" by OCC) was also delivered to KNPC prior to the invasion. However, payment for it was not due until August 1990, during Iraq's occupation of Kuwait. As a result, OCC did not receive payment until after the liberation of that country. The last two shipments (denominated "S-3" and "S-4") could not be shipped until after the end of Iraq's occupation of Kuwait. Payment for such shipments was therefore delayed as well.

50. OCC states that the delays in payment for catalyst ordered by KNPC caused it to maintain a higher level of debt than would have been the case if payment for each shipment had been received on time. As a result, it claims that it incurred JPY 179,245,997 in interest losses on debt owed to Nikko Finance Co. ("Nikko Finance"). OCC's claim for interest losses is stated in Japanese yen because its debt to Nikko Finance was denominated in that currency.

51. In support of this loss element, OCC has provided the purchase orders and other documentation covering the timing of shipments of catalyst ordered by KNPC, invoices and bills of lading with respect to the shipments, a notice of wire transfer evidencing payment for S-2, and certain correspondence evidencing attempts to sell catalyst that could not be delivered to KNPC. OCC has also provided certain credit documentation evidencing rates of interest paid by OCC on amounts owed to Nikko Finance.

1. Catalyst delivered prior to the invasion

52. OCC claims that S-2 was delivered to KNPC in July of 1990 and that KNPC was due to pay KD 1,338,634 for it on 10 August 1990. As a result of Iraq's unlawful invasion and occupation of Kuwait, payment was delayed by 417 days. The delay caused OCC to incur interest losses of JPY 64,389,395.

53. The Panel notes that the evidence provided by OCC confirms that payment for S-2 was delayed by at least 417 days. The Panel finds that this delay in payment and any interest loss that resulted from it were directly caused by Iraq's unlawful invasion and occupation of Kuwait.

54. In decision 16, the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The Governing Council specified, further, that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.[8]

55. The Panel notes that, if OCC had not received payment with respect to the catalyst ordered by KNPC, its claim for the principal amount not received would have been compensable. It would, therefore, have received compensation for its loss and eventually would have been entitled to interest on such award under Governing Council decision 16. As OCC did receive payment for S-2 it must, in order to be put on the same footing as other claimants receiving compensation, be entitled to interest on the principal amount paid late for the period of delay of 417 days pursuant to the formula that will be developed by the Governing Council under decision 16, neither more nor less.

56. The Panel does not accept the Claimant's calculation of the principal amount on which OCC's claimed interest loss is based. The purchase orders provide for payment in Kuwaiti dinars. However, the claimed loss represents interest charged on debt denominated in Japanese yen. Therefore, the principal amount to be employed to calculate OCC's interest loss is the amount in Japanese yen that OCC would have received if the

contract price of S-2 had been received and converted into Japanese yen in August of 1990, the time when payment for S-2 was scheduled to be effected.

57. OCC has provided evidence of exchange rates reserved prior to the invasion for the purpose of converting payment for S-2 into Japanese yen in August of 1990 (the "reserved exchange rates"). The Panel finds that, for the purpose of deriving the principal value on which OCC's interest loss was incurred, the contract price of S-2 must be converted into Japanese yen at the reserved exchange rates.

58. However, OCC did not employ the reserved exchange rates. Instead, it employed the more favourable exchange rate that obtained when OCC's payment was actually converted into Japanese yen in 1991. Based on that rate, OCC calculated a principal amount of JPY 667,322,096. The Panel finds that the correct principal amount is JPY 664,678,633.

59. The discussion of the principal amount to be employed to calculate OCC's interest losses shows that, as a result of a favourable shift in the exchange rate between the Kuwaiti dinar and the Japanese yen, OCC received a greater amount in Japanese yen than would have been the case if it had been paid on time; such gain was equal to JPY 2,643,463. The Panel finds that this amount must be deducted from OCC's recommended compensation with respect to its non-interest losses as set forth in paragraphs 79-80, infra.

60. The Panel recommends that no compensation be awarded with respect to the claimed S-2 interest losses until the time when interest is paid on awards made by the Commission. At that time, OCC's recommended award will consist of interest on the principal amount of JPY 664,678,633 for a period of 417 days at the rate determined by the Governing Council under decision 16.

2. Catalyst delivered after the occupation

61. OCC claims that S-3 and S-4 were produced prior to the invasion of Kuwait and scheduled to be shipped to KNPC from Japan in September and August 1990, respectively. Due to Iraq's occupation of Kuwait, shipment and payment for the two shipments were delayed by 737 days and 518 days, respectively. OCC claims that it incurred interest losses of JPY 114,856,602 due to late payment for S-3 and S-4. Because OCC was contractually liable for transport costs, the principal amounts employed to calculate the interest losses are equal to the contract price of each shipment minus a charge for shipping costs. The principal amounts stated by OCC are JPY 639,655,392 in the case of S-3 and JPY 156,806,225 in the case of S-4.

62. The Panel finds that the contractual documentation provided by the claimant and the bills of lading for the two shipments confirm that OCC has

not overstated the delays in shipment and therefore the length of the period over which the claimed interest losses were incurred. The Panel finds that this delay in payment and the related interest losses were directly caused by Iraq's unlawful invasion and occupation of Kuwait and the damage to KNPC refineries that resulted therefrom.

63. The Panel notes that OCC has stated that it tried to mitigate its claimed losses by offering catalyst that could not be delivered to KNPC to other purchasers. However, the existing clients of OCC that employ catalyst with specifications equivalent to those of S-3 and S-4 had already filled their requirements. Accordingly, OCC attempted to resell the catalyst to certain refineries in the United States of America, Canada and Taiwan. It has provided correspondence showing that such attempts were not successful. Based on this evidence, the Panel finds that OCC engaged in sufficient efforts to mitigate its claimed loss.

64. As in the case of S-2, the Panel notes that, if OCC had not received payment with respect to S-3 and S-4, its claim for the principal amount not received would have been compensable. It would, therefore, have received compensation for its loss and eventually would have been entitled to interest on such award under Governing Council decision 16. As OCC did receive payment it must, in order to be put on the same footing as other claimants receiving compensation, be entitled to interest on the principal amount paid late for the period of delay of 737 days in the case of S-3, and 518 days in the case of S-4, pursuant to the formula that will be developed by the Governing Council under decision 16, neither more nor less.

65. The Panel finds, based on the evidence provided, that OCC has not overstated the principal amount employed to calculate its interest losses. The Panel notes that OCC has employed the unit rate charged for the shipment of S-2 in June of 1990 to estimate the costs it would have incurred to deliver S-3 and S-4 to KNPC if Iraq had not invaded Kuwait. The Panel finds that use of the S-2 shipping rate for this purpose is appropriate.

66. The Panel recommends that no compensation be awarded with respect to the claimed S-3 and S-4 interest losses until the time when interest is paid on awards made by the Commission. The Panel recommends that at that time the following awards be made: With respect to S-3, interest on the principal amount of JPY 639,655,392 for a period of 737 days at the rate determined by the Governing Council under decision 16. With respect to S-4, interest on the principal amount of JPY 156,806,225 for a period of 518 days at the rate determined by the Governing Council under decision 16.

B. Non-interest losses

1. Additional shipping costs

67. OCC claims that, due to the delays in shipment caused by Iraq's unlawful invasion and occupation of Kuwait, it incurred higher transportation costs to deliver S-3 and S-4 to KNPC in 1992 than would have been the case if the shipments had been made on time. OCC seeks compensation in the amount of US$86,531 for such costs.

68. In support of this loss element, OCC has provided invoices with respect to the cost of shipping S-3 and S-4, and documentation evidencing the shipping rates that would have applied if S-3 and S-4 had been shipped on time.

69. The Panel finds that the evidence provided confirms that the cost of shipping S-3 and S-4 from Japan to Kuwait increased by US$86,531 as a result of the delays in shipment. Because the delays occurred as result of Iraq's unlawful invasion and occupation of Kuwait, the Panel finds that the additional shipping costs represent a compensable loss.

2. Storage costs

70. OCC claims that, due to a delay in shipment caused by Iraq's unlawful invasion and occupation of Kuwait and space limitations at its facilities in Japan, it had to store S-3 with Mitsubishi Warehouse Co. ("Mitsubishi") between 1 October 1990 and 6 October 1992. OCC seeks compensation in the amount of JPY 29,152,879 for the resulting storage charges. It does not advance a claim with respect to storage of S-4.

71. The Panel has already found, at paragraph 62, supra, that the shipment of S-3 was delayed by 737 days as a result of Iraq's unlawful invasion and occupation of Kuwait. The Panel now finds that any proven storage costs incidental to such delay were also incurred as a direct result of Iraq's invasion and occupation of Kuwait.

72. OCC has provided a copy of an invoice dated 30 September 1992 from Mitsubishi Warehouse Co. that shows that it incurred the claimed amount of storage charges with respect to S-3. In addition, OCC has stated that it attempted, in vain, to reduce such expenses by offering catalyst intended for KNPC to other purchasers. At paragraph 63, supra, the Panel found, based on the evidence provided by OCC, that such attempts represented sufficient efforts to mitigate its claimed interest losses. It reaches the same conclusion in the case of the claimed storage costs.

73. Accordingly, the Panel finds that OCC incurred a compensable loss of JPY 29,152,879 in storage expenses as a result of Iraq's unlawful invasion and occupation of Kuwait.

3. Catalyst stored in Kuwait

74. OCC claims that on 2 August 1990 it held legal title to 9,880 kilograms of catalyst stored at KNPC's Mina Abdulla refinery in Kuwait. OCC claims that such catalyst was missing from that location after the liberation of Kuwait. KNPC seeks compensation in the amount of JPY 7,302,030 for the resulting loss.

75. The Panel notes that, in order to prove that it incurred the claimed loss, OCC must, inter alia, show that the claimed amount of catalyst was being stored at the Mina Abdulla refinery on 2 August 1990, the date of Iraq's invasion of Kuwait. To this end, OCC was asked, in the article 34 notification issued on 2 November 1998, to provide the last inventory statement showing amounts stored at Mina Abdulla prior to the invasion and evidence of withdrawals between the date of that statement and the invasion.

76. In reply, OCC provided an inventory statement compiled by KNPC on 22 May 1990, more than two months prior to Iraq's invasion of Kuwait. In addition, OCC provided a letter from its agent in Kuwait, written two years after the invasion, which reconstructs the amount of catalyst held at Mina Abdulla at the time of the claimed loss by subtracting catalyst sold after 22 May 1990 from the stock reported in the KNPC inventory statement. No primary evidence of such withdrawals was provided.

77. The Panel finds that the documentary evidence provided by OCC does not prove the amount of catalyst held at Mina Abdulla on the date of Iraq's invasion of Kuwait with a sufficient degree of certainty. Accordingly, it finds that this loss element must fail on evidentiary grounds and recommends that no compensation be awarded with respect to it.

4. Deductions from non-interest losses

(a) Exchange rate gain

78. At paragraph 59, supra, the Panel found that, as a result of a shift in the exchange rate between the Kuwaiti dinar to Japanese yen exchange rate, OCC earned an extraordinary gain of JPY 2,643,463 when it received payment for S-2. The Panel recommends that this gain be deducted from any compensation awarded with respect to OCC's non-interest losses.

(b) Compensation from KNPC

79. In an Article 34 Notification, OCC was asked whether it had received any compensation for its claimed losses from KNPC.

80. OCC replied that after the liberation of Kuwait KNPC agreed to renegotiate the contract prices of S-3 and S-4 in order to partially compensate OCC for losses caused by the delays in payment. As a result, OCC received KD 69,078 in addition to the original contract price of the two shipments.

81. OCC has provided invoices evidencing the increase in the contract prices of S-3 and S-4.

82. The Panel finds that this evidence confirms that the contract price of the two shipments increased by KD 69,078 after the liberation of Kuwait. The Panel recommends that this amount be offset from any compensation awarded with respect to OCC's non-interest losses.

5. Non-interest losses: recommended compensation after deductions

83. After making the deductions set forth in paragraphs 78 and 82, supra, the Panel recommends that compensation in the amount of US$80,206 be awarded with respect to OCC's non-interest losses.

84. Table 12 sets forth OCC's proven non-interest losses and the deductions made from such awards to calculate the Panel's recommended award.

Table 12. Non-interest losses: recommended compensation after deductions

Loss or deduction		Claim	Proven loss or deduction (Original currency)	Proven loss or deduction (US$)
Losses				
Additional shipping costs	(US$)	86,531	86,531	86,531
Storage costs	(JPY)	29,152,879	29,152,879	244,571
Catalyst stored in Kuwait	(JPY)	7,302,030	0	0
Deductions				
Exchange rate gain	(JPY)		(2,643,463)	(19,898)
Compensation from KNPC	(KD)		(69,078)	(230,998)
Total recommended award				80,206

C. Total recommended award

85. The recommendations of the Panel with respect to OCC's claim can be summarized as follows:

Table 13. OCC recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Interest losses	(JPY)	179,245,997	*	*
Non-interest losses	(US$)	86,531		
	(JPY)	36,454,909		80,206 **

* The recommended compensation with respect to OCC's interest losses will be determined as stated in paragraphs 60 and 66, supra.

** The calculation of the recommended award with respect to OCC's non-interest losses is set forth in Table 12, supra.

VIII. CLAIM OF ANCHOR FENCE, INC.

86. Anchor Fence, Inc. ("Anchor Fence") was a corporation organized under the laws of the State of Maryland, in the United States of America. Anchor Fence produces wire and fence products.

87. In March of 1990 Anchor Fence entered into a contract with the Chain Link Industries Company w.l.l. ("Chain Link"), a Kuwaiti company, to deliver to Kuwait wire for use in the oil industry and to train Chain Link employees to weave the wire into chain link mesh.

88. Anchor Fence claims that, as a result of Iraq's unlawful invasion and occupation of Kuwait, it was not able to deliver and receive payment for part of the wire ordered by Chain Link; this caused it to incur a loss of profits. In addition, Anchor Fence claims that it incurred further losses with respect to salary and other payments made to an employee who was not able to leave Kuwait during Iraq's occupation of that country. Anchor Fence seeks compensation in the amount of US$172,315 for these losses. Anchor Fence's claim is summarized as follows:

Table 14. Anchor Fence net claim

Loss element		Claim
Loss of profits	(US$)	161,451
Payment or relief to others	(US$)	10,864
Total	(US$)	172,315

A. Contract losses

89. Anchor Fence seeks compensation in the amount of US$161,451 for lost profits on its contract with Chain Link. The facts alleged by Anchor Fence are as follows: On 20 March 1990 Chain Link ordered 1,350 metric tonnes ("MT") of wire from Anchor Fence for a total price of US$1,190,997. The wire was to be delivered to Chain Link in several shipments, over a period of 33 weeks. Prior to Iraq's invasion of Kuwait, Anchor Fence had delivered MT 469.594 to Chain Link, for which it was paid US$414,644. Due to Iraq's invasion and occupation of Kuwait, Anchor Fence was not able to deliver MT 880.406, the rest of the wire ordered by Chain Link. It therefore did not receive US$776,353 in revenues, the contract price of the undelivered wire.

90. Anchor Fence claims that the production costs of the wire that could not be delivered would have been equal to US$614,902. Although it has stated that a small quantity of that wire was in fact produced, Anchor

Fence has treated the production costs of the entire amount of the undelivered wire as saved costs and, in calculating its claimed loss of profits, subtracted them from the revenue that it would have received for the wire.

91. In support of this loss element, Anchor Fence has provided the purchase order that sets forth Chain Link's order of wire (the "purchase order"), invoices and bills of lading evidencing deliveries made to Chain Link, a "loss of profit affidavit" of the chief financial officer of Anchor Fence and certain internal accounting documentation with respect to actual and projected production costs.

92. The Panel finds that, as a result of Iraq's unlawful invasion and occupation of Kuwait, Anchor Fence was unable to continue to deliver wire ordered by Chain Link after 2 August 1990.

93. The Panel finds that the evidence provided confirms that Chain Link ordered MT 1,350 of wire from Anchor Fence and that MT 880.406 of that amount could not be delivered after Iraq's invasion of Kuwait. The Panel also finds that Anchor Fence did not receive payment for the undelivered wire, and that the contract price of such wire was US$776,712, an amount slightly greater than that stated by Anchor Fence. The contract price of the undelivered wire represents the gross revenue lost by Anchor Fence as a result of Iraq's unlawful invasion and occupation of Kuwait.

94. Anchor Fence has stated that its saved production costs of US$614,902 included the costs of wire, powder, direct labour, factory overhead, taxes and benefits, and packaging. The Panel finds, based on the evidence provided, that such costs were equal to US$627,925.

95. In addition, the Panel finds that Anchor Fence failed to include three categories of costs among those to be offset against the lost revenues.

96. First, Anchor Fence did not deduct from the lost revenues the cost of raw materials that would have been scrapped during the production of the undelivered wire. Based on Anchor Fence's production costs records, the Panel finds that the claimant would have incurred scrap costs of US$33,120. Such costs should be deducted from Anchor Fence's claim.

97. Second, although the purchase order allocated to Chain Link the cost of shipments from the United States to Kuwait, Anchor Fence would have been liable for the cost of transporting wire from its factory to the port of Baltimore. In response to a request from the Panel, Anchor Fence has stated that it saved US$9,342 in transport costs after further deliveries of wire to Chain Link became impossible and provided evidence of the

relevant transport rates. Based on such evidence, the Panel finds that Anchor Fence saved US$10,151 in transport costs and that this amount should be deducted from Anchor Fence's claimed loss.

98. Third, Anchor Fence was paid for wire delivered to Chain Link by means of a letter of credit. Bank statements provided to the Panel show that, due to bank charges under the letter of credit, Anchor Fence only received 99.66 per cent of each payment made by Chain Link for wire. After applying this rate, the Panel finds that Anchor Fence saved US$2,641 in bank charges on payments for the undelivered wire and that this amount should be deducted from the claimed loss.

99. The Panel finds, after making the adjustments described above, that Anchor Fence incurred a loss of profits of US$102,875 on the contract with Chain Link, and recommends compensation in that amount.

B. Payment or relief to others

100. Anchor Fence claims that on 2 August 1990 one of its employees was providing training services to Chain Link in Kuwait. When Iraq invaded that country, the employee went into hiding. He remained in Kuwait until 9 December 1990, when he was able to return to the United States. Anchor Fence claims that it continued to pay the employee's salary and benefits while he was in hiding. It seeks compensation in the amount of US$10,864 for these expenses.

101. In support of this loss element, Anchor Fence has provided a copy of the purchase order, a memorandum of the United States Department of State stating that the employee was in hiding in Kuwait between 2 August 1990 and 9 December 1990, the employee's wage and tax statement for 1990 and certain extracts of employment data prepared by Anchor Fence for the State of Maryland.

102. The Panel finds that the evidence provided shows that the employee was in hiding in Kuwait for 130 days. In addition, the Panel finds that Anchor Fence has proved that it made salary payments of US$9,097 with respect to this period. However, no evidence has been provided showing that the employee's compensation during the relevant period included payments other than his salary.

103. The Panel finds that the salary payments made to the employee for the period during which he was in hiding in Kuwait represent a loss directly caused by Iraq's invasion and occupation of Kuwait. Accordingly, it recommends that compensation in the amount of US$9,097 be provided with respect to this loss element.

C. Recommended award

104. In summary, the recommendations of the Panel are as follows:

Table 15. Anchor Fence recommended compensation

Loss element			Claim	Recommendation (US$)
Loss of profits		(US$)	161,451	102,875
Payment or relief to others		(US$)	10,864	9,097
	Total	(US$)	172,315	111,972

IX. CLAIM OF CALTEX PETROLEUM CORPORATION

105. Caltex Petroleum Corporation ("Caltex") is a closely-held corporation incorporated in the state of Delaware, in the United States of America, with operations in the petroleum and petrochemical industries.

106. Caltex claims that between 13 May and 23 June 1990 its wholly-owned subsidiary, Caltex Trading and Transport Corporation ("CTTC") supplied petroleum products with a value of US$201,926 (the "products") to Jasim Abdulwahab & Partner Co. W.L.L. ("JAC"), its agent in Kuwait.[9] As part of their trading arrangements, CTTC had granted JAC 90 days' credit. As a result, JAC's obligation to pay CTTC for the petroleum products matured during Iraq's occupation of Kuwait. Caltex claims that, due to Iraq's unlawful invasion and occupation of Kuwait, JAC did not pay CTTC for the petroleum products; it seeks compensation in the amount of US$201,926 for the resulting loss. Caltex's claim is as follows:

Table 16. Caltex net claim

Loss element			Claim
Receivables		(US$)	201,926
	Total	(US$)	201,926

107. In support of its claim, Caltex has provided the agency agreement between CTTC and JAC, certain correspondence concerning the credit terms granted to JAC, invoices with respect to petroleum products delivered to JAC, and a letter dated 28 April 1991 from CTTC to JAC concerning JAC's debt to CTTC.

108. The Panel notes that, in its letter of 28 April 1991, CTTC asked JAC whether any of the products were still in JAC's possession and whether payments could be expected for products resold by JAC prior to Iraq's invasion of Kuwait. CTTC added that it was, at that time, treating the amount owed by JAC as a "force majeure situation", but asked JAC to clarify how it intended to "finalise" its debt.

109. The Panel finds that Caltex has provided no evidence showing that JAC ultimately failed to pay its debt to CTTC. In this regard, the Panel notes that Caltex was asked to state whether it had been paid by JAC after its claim was filed with the Commission in the article 34 notification that was issued on 2 November 1998 and, a second time, in the Panel's procedural order of 20 May 1999. Caltex failed to reply to both communications.

110. Without deciding whether the loss, if proven, would have resulted directly from Iraq's unlawful invasion and occupation of Kuwait, the Panel therefore finds that Caltex has failed to prove that it incurred the claimed loss. Accordingly, the Panel recommends that no compensation be awarded with respect to Caltex's claim. The recommendation of the Panel is as follows:

Table 17. Caltex recommended compensation

Loss element		Claim	Recommendation
			(US$)
Receivables	(US$)	201,926	0
Total	(US$)	201,926	0

X. CLAIM OF ARABIAN DRILLING COMPANY

111. Arabian Drilling Company ("Arabian Drilling") filed a category "E" claim form with the Commission in which it described itself as a joint venture company with operations in the business of oil well drilling. Arabian Drilling did not submit a statement of claim with its category "E" claim form. It did submit several invoices, some in Arabic and some in English. These invoices cannot be reconciled to the category "E" claim form.

112. Based on the category "E" claim form, Arabian Drilling's claim can be summarized as follows:

Table 18. Arabian Drilling net claim

Loss element			Claim
Real property		(US$)	35,443
Other tangible property		(US$)	17,891
	Total	(US$)	53,334

113. In the article 34 notification issued to Arabian Drilling, a number of deficiencies of this claim were noted, such as the absence of a statement of claim. Specific defects in the supporting evidence submitted by Arabian Drilling were also noted, including the absence of any evidence of the circumstances of the claimed loss. Arabian Drilling was requested to correct these and certain formal deficiencies by 6 January 1999. The Commission has received no response to this request.

114. The Panel directed an interrogatory to Arabian Drilling with its Procedural Order of 20 May 1999 in which the claimant was directed to respond to the questions in the article 34 notification by 21 July 1999. The Commission has received no response to this request.

115. The Panel finds that there is insufficient evidence to support Arabian Drilling's claim. Accordingly, the Panel recommends that no compensation be awarded with respect to this claim. The recommendation of the Panel can be summarized as follows:

Table 19. Arabian Drilling recommended compensation

Loss element		Claim	Recommendation (Original currency)	Recommendation (US$)
Real property	(US$)	35,443	0	0
Other tangible property	(US$)	17,891	0	0
Total	(US$)	53,334	0	0

XI. CLAIM OF ALHUSEINI CORPORATION

116. Alhuseini Corporation ("Alhuseini") is a sole proprietorship organized under the laws of the Kingdom of Saudi Arabia ("Saudi Arabia") with operations in the petroleum industry.

117. Alhuseini claims that, during Iraq's occupation of Kuwait, Iraqi troops stole a Continental Emsco drilling rig, certain spare parts for the rig, and a mobile housing camp (the "items"). The items, which belonged to Alhuseini, were being stored at Wafra in the Kuwaiti section of the partitioned neutral zone ("PNZ") between Kuwait and Saudi Arabia.

118. Alhuseini seeks compensation in the amount of US$2,800,000, net of interest and claim preparation costs, for the resulting loss. It states that the claimed amount represents the value of the items at the time of the loss.

119. Alhuseini's claim can be summarized as follows:

Table 20. Alhuseini net claim

Loss element			Claim
Other tangible property		(US$)	2,800,000
	Total	(US$)	2,800,000

120. In support of its claim, Alhuseini has provided invoices evidencing the purchase costs of the items and contractual documentation showing that these were in use between 1980 and 1983. In addition, Alhuseini has provided a copy of a letter that it wrote to the United Nations Security Council on 18 November 1990 to report the loss. Alhuseini has also provided an insurance certificate issued on 2 June 1991 by L'Union des Assurances de Paris I.A.R.D. ("UAP"), which states that the rig and the housing camp were insured against all risks of loss or damage excluding war and that these were located at Wafra on the date of Iraq's invasion of Kuwait.

121. The Panel finds, based on the evidence provided, that Alhuseini owned the items and that these were stolen from the site where they had been stored during Iraq's occupation of Kuwait. The Panel finds that this loss occurred as a result of Iraq's invasion and occupation of Kuwait.

122. The invoices provided by Alhuseini show that the rig, the spare parts and the housing camp were purchased new in 1980 for US$7,418,615.[10]

123. However, Alhuseini has failed to provide adequate evidence of the

condition and value of the items at the time of the loss. In this regard, the Panel notes that Alhuseini claims that this failure is attributable to the fact that all documentation with respect to the maintenance and use of the items was kept at Wafra and could not be recovered after the liberation of Kuwait. Although Alhuseini has provided no evidence on this point, the Panel believes that the documentation would have been stored at the same location as the items and that it is likely to have gone missing during Iraq's occupation of Kuwait. Accordingly, it finds that Alhuseini's failure to provide evidence of the condition of the items is itself a result of Iraq's unlawful invasion and occupation of Kuwait, and proceeds to value the claimed loss based on the information available to it.

124. The Panel finds that the residual value after depreciation of the items at the time of the loss was US$1,100,000 and recommends that compensation be awarded in that amount. The recommendation of the Panel is therefore as follows:

Table 21. Alhuseini recommended compensation

Loss element		Claim	Recommendation
			(US$)
Other tangible property	(US$)	2,800,000	1,100,000
Total	(US$)	2,800,000	1,100,000

XII. CLAIM OF SAUDI AUTOMOTIVE SERVICES COMPANY

125. Saudi Automotive Services Company ("Saudi Automotive") is a joint stock company organized under the laws of Saudi Arabia. Saudi Automotive owns petrol stations and rest houses throughout Saudi Arabia.

126. Saudi Automotive seeks compensation in the amount of SAR 5,661,250, net of interest and claim preparation costs, for losses incurred as a result of Iraq's unlawful invasion and occupation of Kuwait. Saudi Automotive's claim is summarized as follows:

Table 22. Saudi Automotive net claims

Loss element		Claim
Real property	(SAR)	424,750
Other tangible property	(SAR)	96,500
Loss of rent	(SAR)	3,640,000
Loss of subsidy	(SAR)	1,500,000
Total	(SAR)	5,661,250

A. Real property

127. Saudi Automotive seeks compensation in the amount of SAR 424,750 for damage to buildings caused by Iraq's unlawful invasion and occupation of Kuwait. The claimed damage occurred at three locations owned by Saudi Automotive in Saudi Arabia: a service and rest station at Jadidat, Arar (the "Jadidat Station"), a mechanical workshop in Riyadh (the "Riyadh Workshop") and a service station in Um-al-Hammam (the "Um-al-Hammam Station").

1. Jadidat Station

128. The Jadidat Station is located close to the border between Saudi Arabia and Iraq. Saudi Automotive states that the construction of the Jadidat Station had just been completed when Allied Coalition Forces occupied it in September of 1990, during Iraq's unlawful occupation of Kuwait. The Jadidat Station was used as a military base until March of 1991. Saudi Automotive states that the occupying troops caused damage to the buildings of the Jadidat Station. The damage was of a superficial nature that included damage to fixed items such as doors, windows, a fence and bathroom facilities, and damage to paint work. Saudi Automotive seeks compensation in the amount of SAR 236,800, the estimated cost of repairs to the Jadidat Station.

129. Saudi Automotive has provided evidence of ownership of the Jadidat Station and copies of letters from M&M Company Ltd ("M&M Company"), the contractor that built the Jadidat Station, which refer to its occupation by Allied Coalition Forces.

130. The Panel finds that the evidence provided by Saudi Automotive proves that the Jadidat Station was occupied by Allied Coalition Forces between September 1990 and March 1991.

131. The Panel notes that Governing Council decision 7 states, in relevant part, that compensation is available with respect to "any loss suffered as a result of: ... [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991 ...".[11] The Panel finds that the occupation of the Jadidat Station, which is situated close to the border between Saudi Arabia and Iraq, constituted "military operations" by the Allied Coalition Forces, and that any proven losses that resulted from it were caused by Iraq's unlawful invasion and occupation of Kuwait.

132. The Panel notes that Saudi Automotive has stated that, because a decrease in traffic between Iraq and Kuwait made it unprofitable to operate the Jadidat Station, it decided not to repair the station after the end of its occupation. For this reason, Saudi Automotive has not been able to provide evidence of costs actually incurred to repair the Jadidat Station.

133. Instead, Saudi Automotive has provided two estimates, issued by separate construction firms, of the costs of repair. One of the estimates states the cost of repair as SAR 335,000; the other as SAR 290,000. The description of damage to be repaired set forth in the estimates is not detailed, although it is generally consistent with the damage described in Saudi Automotive's statement of claim.

134. However, the estimates appear to have been prepared in 1998, seven years after the claimed loss occurred. The Panel notes that, because the Jadidat Station was abandoned after 1991, the damage caused during the occupation was likely to have been exacerbated by additional wear and tear and other factors. The Panel therefore believes that the estimates, which state estimated repair costs in 1998, significantly overstate such costs.

135. The Panel finds that the cost of repairing damage caused by the Allied Coalition Forces during their occupation of the Jadidat Station would not have exceeded SAR 145,000. In addition, the Panel finds, based on the evidence provided, that no compensation for such loss was received from any other source, including the Government of Saudi Arabia and the Allied Coalition Forces. Accordingly, the Panel recommends that compensation be awarded in the United States dollar equivalent of SAR 145,000.

2. Riyadh Workshop

136. Saudi Automotive claims that on 8 February 1991 the Riyadh Workshop was damaged by the explosion of a missile nearby. It seeks compensation in the amount of SAR 178,150 for damage to the buildings.

137. In support of this loss element, Saudi Automotive has provided proof of ownership of the Riyadh Workshop, a detailed description of the damage caused by the missile explosion and a letter dated 9 February 1991 reporting the loss to the Saudi Director General of Civil Defence. It has also provided an estimate, issued by a construction contractor on 21 February 1991, which states the cost of repair of the Riyadh workshop as SAR 58,425, and receipts evidencing payment of SAR 46,265 to such contractor for the repairs.

138. The Panel finds, based on the evidence provided, that Saudi Automotive has proved that it owned the Riyadh workshop and that the Riyadh workshop was damaged by a missile explosion during Iraq's unlawful occupation of Kuwait. The Panel also finds that the damage caused by the explosion was a direct result of Iraq's unlawful invasion and occupation of Kuwait.

139. Further, the Panel finds that, because the Riyadh workshop was repaired and resumed operations after it was damaged, the cost of reasonable repairs actually made to the workshop represents the best measure of the damage incurred by Saudi Automotive. The evidence provided shows that Saudi Automotive paid SAR 46,265 to repair damages to the Riyadh Workshop and that such expense was reasonably incurred. Accordingly, the Panel recommends that compensation in the United States dollar equivalent amount of SAR 46,265 be awarded with respect to this element of Saudi Automotive's claim.

3. Um-al-Hammam Station

140. Saudi Automotive claims that it incurred certain damages to real property at the Um-al-Hammam Station. It seeks compensation in the amount of SAR 9,800, the cost of repairing the station.

141. Saudi Automotive has not provided a description of the circumstances of the loss or any documentary evidence of its occurrence. The Panel notes that Saudi Automotive was asked to do so in an article 34 notification issued on 2 November 1998 and in interrogatories attached to the Panel's Procedural Order of 20 May 1999. Saudi Automotive's replies to both communications did not address these requests.

142. Accordingly, the Panel finds that this loss element must fail on evidentiary grounds and recommends that no compensation be awarded with respect to it.

4. Real property: summary of recommended compensation

143. In summary, the Panel recommends that compensation in the United States dollar equivalent amount of SAR 191,265 be awarded with respect to Saudi Automotive's claim for damage to real property.

B. Other tangible property

144. Saudi Automotive seeks compensation in the amount of SAR 96,500 for damage to other tangible items at the Riyadh Station and the Jadidat Station.

145. However, Saudi Automotive has provided no evidence with respect to these claimed losses. The Panel notes that Saudi Automotive was asked to do so in an article 34 notification issued on 2 November 1998 and in interrogatories attached to the Panel's procedural order of 21 May 1999.

146. Accordingly, the Panel finds that this part of Saudi Automotive's claim must fail on evidentiary grounds and recommends that no compensation be awarded with respect to it.

C. Loss of rent

147. Saudi Automotive claims that due to Iraq's unlawful invasion and occupation of Kuwait it was unable to lease the Jadidat Station to a tenant or otherwise derive income from it between October of 1990 and October of 1998. It seeks compensation in the amount of SAR 3,640,000 for the resulting loss.

1. Loss period

148. Saudi Automotive claims that part of the claimed loss of rent was caused by the occupation of the Jadidat Station by Allied Coalition Forces, which made it impossible to operate the station.

149. The Panel has already found, at paragraph 130, supra, that the Jadidat Station was occupied by Allied Coalition Forces between September 1990 and March 1991 and that proven losses caused by such occupation resulted from Iraq's unlawful invasion and occupation of Kuwait. The Panel finds that the occupation of the Jadidat Station caused Saudi Automotive to lose nine months of rent. This period includes months of rent lost during the occupation period and an allowance for the time necessary to repair

damages caused by the Allied Coalition Forces. In addition, the Panel finds, based on the evidence provided, that no compensation for such loss was received from any other source, including the Government of Saudi Arabia and the Allied Coalition Forces.

150. Saudi Automotive states that the portion of its claimed rent loss that was not caused by the occupation of the Jadidat Station (the "post-occupation loss") occurred because a decrease in traffic between Iraq and the Kingdom of Saudi Arabia made it unprofitable to operate the station. Saudi Automotive has stated that the decrease in traffic was caused by the United Nations trade embargo against Iraq and the closing down of the border with Iraq; it has not provided evidence of causation other than the trade embargo.

151. The Panel notes that, pursuant to decision 9 of the Governing Council, no compensation can be awarded for losses that result from the trade embargo unless the claimant can prove that Iraq's unlawful invasion and occupation of Kuwait also constituted a cause of the loss that was separate and distinct from the embargo.[12] Because Saudi Automotive has provided no evidence of causation other than the trade embargo, and because the post-occupation loss occurred after the end of the occupation of Kuwait, the Panel finds that no compensation can be provided with respect to such loss.

152. Accordingly, the Panel finds that Saudi Automotive incurred rent losses caused by Iraq's unlawful invasion and occupation of Kuwait over a period of nine months.

2. Valuation

153. Saudi Automotive states that, because it had only just been completed, the Jadidat Station had not yet begun commercial operations when it was occupied by Allied Coalition Forces; nor had a lease with respect to it been entered into. For this reason, Saudi Automotive could not refer to past performance in calculating its losses. Therefore, Saudi Automotive has based its claimed loss on average annual rents that it charged in 1990 for certain service stations (the "other stations") which it claims were comparable to the Jadidat Station. The average annual rent of the other stations was SAR 455,000.

154. Saudi Automotive has provided extracts of leases with respect to the other stations, financial statements that set forth their construction costs and the construction contract with respect to the Jadidat Station.

155. The Panel finds that the evidence that has been provided confirms that the Jadidat Station had not begun commercial operations when it was

occupied by Allied Coalition Forces. The Panel therefore agrees that, in the absence of information with respect to past performance of the Jadidat Station or a current lease, reference to past performance for comparable stations - in this case the rents charged for the other stations - is appropriate.

156. However, the Panel notes that the evidence provided shows that the construction costs of the other stations varied materially from that of the Jadidat Station, which the Panel finds was equal to SAR 6,683,000. The Panel believes that rents of service stations are usually directly correlated to the construction costs of such stations. Therefore, the Panel finds that it is appropriate to consider rent in conjunction with construction costs.

157. In order to do so, the Panel has determined the rate of annual return on construction costs of each of the other stations. Such rates of return, which were calculated by dividing the rent of each of the other stations by its construction costs, average 6.062 per cent. Based on such average rate and on the construction cost of the Jadidat Station the Panel has calculated that, if the Jadidat Station had not been occupied, Saudi Automotive could have earned an annual rent of SAR 405,147, or SAR 303,860 over the nine-month loss period.

158. Accordingly, the Panel finds that Saudi Automotive incurred a loss of rent of SAR 303,860 as a result of the invasion and occupation of Kuwait and recommends that compensation in the United States dollar equivalent of that amount be awarded.

D. Loss of subsidy

159. In its reply to the article 34 notification of 2 November 1998, Saudi Automotive added a new loss element to its claim. Saudi Automotive claims that, due to the occupation of the Jadidat Station by Allied Coalition Forces, it did not receive a subsidy payment of SAR 1,500,000 from the Government of Saudi Arabia, and seeks compensation in that amount.

160. The Panel views replies to interrogatories and other supplemental filings as means by which a claimant may offer additional evidence and information in support of a claimed loss. However, the Panel finds that a claimant may not add new loss elements to its claim by means of such filings.

161. Accordingly, the Panel does not consider Saudi Automotive's claim for loss of subsidy and recommends that no compensation be awarded with respect to it.

E. Recommended compensation

162. The Panel's recommended compensation with respect to Saudi Automotive's claim can be summarized as follows:

Table 23. Saudi Automotive recommended compensation

Recommended award		Claim	Recommendation (Original currency)	Recommendation (US$)
Real property	(SAR)	424,750	191,265	51,072
Other tangible property	(SAR)	96,500	0	0
Loss of rent	(SAR)	3,640,000	303,860	81,138
Loss of subsidy	(SAR)	1,500,000	0	0
Total	(SAR)	5,661,250	495,125	132,210

XIII. CLAIM OF IDEMITSU KOSAN CO., LTD.

163. Idemitsu Kosan Co., Ltd. ("Idemitsu") filed a category "E" claim form with the Commission through the Government of Japan, in which it described itself as a closely-held corporation with operations in the petroleum business. Idemitsu did not submit a statement of claim with the "E" claim form. It did provide a two-page internal company document describing how certain "damages driven by Iraqi invasion of Kuwait" would be treated for accounting purposes. No other supporting evidence has been provided.

164. Idemitsu's claim can be summarized as follows:

Table 24. Idemitsu net claim

Loss element		Claim
Real property	(JPY)	13,366,390
Total	(JPY)	13,366,390

165. In the article 34 notification issued to Idemitsu, a number of deficiencies in this claim were noted, including the absence of a statement of claim. The secretariat also noted an absence of supporting evidence. Idemitsu was requested to correct these and certain formal deficiencies by 6 January 1999. To date, the Commission has received no response to this request.

166. The Panel issued an interrogatory to Idemitsu with its Procedural Order of 20 May 1999 in which the Claimant was directed to respond to the questions in the article 34 notification by 21 July 1999. To date, the Commission has received no response to this request.

167. The Panel finds that there is insufficient evidence to support Idemitsu's claim. Accordingly, the Panel recommends that no compensation be awarded with respect to this claim. The recommendation of the Panel can be summarized as follows:

Table 25. Idemitsu recommended compensation

Loss element	Claim	Recommendation (Original currency)	Recommendation (US$)
Real property	(JPY) 13,366,390	0	0
Total	(JPY) 13,366,390	0	0

XIV. INCIDENTAL ISSUES

A. Currency exchange rate

168. The Panel notes that several of the claimants have advanced claims in currencies other than United States dollars. Except as noted in this report, the Panel has assessed all such claims, and performed all claim calculations, in the original claim currencies. However, the Commission issues its awards in United States dollars. Accordingly, the Panel is required to determine the appropriate rate of exchange to apply to losses expressed and assessed in currencies other than United States dollars.

169. The Panel also notes that all prior Commission compensation awards have relied upon the United Nations Monthly Bulletin of Statistics for determining commercial exchange rates into United States dollars.[13] The Panel adopts that approach for this report.

170. In the circumstances, the Panel finds that the appropriate currency exchange rate to be applied to the claims advanced in the fifth instalment in currencies other than the United States dollar is the rate prevailing on the date of loss, as outlined in paragraphs 172-176, infra.

171. The currency exchange rates employed with respect to the deductions from OCC's claim (see paragraphs 78-82 supra) are those prevailing on 30 September 1991 and 3 October 1992. These are the approximate dates when OCC received the exchange rate gain and the compensation from KNPC, respectively.

B. Interest

172. All claim figures in the body of this report are net of any individual interest claims advanced by the claimants.

173. In accordance with Governing Council decision 16, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16, the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing a decision on the methods of calculation and payment of interest.[14]

174. The task of the Panel, therefore, is to determine the date from which interest will run for successful claimants in this instalment.

175. In each case where a precise date of loss is apparent or discernible, the Panel recommends that precise date as the date from which interest will

run. In some cases, a precise date of loss cannot be established. In those cases, the Panel has been guided by relevant principles set forth in the report and recommendations made by the Panel of Commissioners concerning the first instalment of "E2" claims.[15] In particular, where the claim is for a loss of profits where that loss was incurred regularly over a period of time, the Panel has selected the mid-point of those losses. Further, where the claim is for a loss of tangible assets, the Panel has selected 2 August 1990 (the date of Iraq's unlawful invasion of Kuwait) as the date of the loss, as that coincides with the claimants' date of loss of control over the assets in question.

176. In accordance with these determinations, the following is a summary of the recommendations for compensation of the Panel, along with a date from which interest awards will run:

Table 26. Summary of recommendations by loss type with interest start dates

Name of claimant and loss element	US$ award amount	Interest start date
Elf		
loss of tangible property	29,000	2 August 1990
Van der Sluijs		
contract losses	0	Not applicable
business transaction or course of dealing	0	Not applicable
Mutraco		
business transaction or course of dealing	0	Not applicable
Petrolexportimport		
contract losses	0	Not applicable
bank interest	0	Not applicable
OCC		
interest losses	*	3 October 1992[16]
non-interest losses	80,206	12 September 1992[17]
Anchor Fence		
loss of profits	102,875	26 September 1990
payment or relief to others	9,097	6 October 1990
Caltex		
business transaction or course of dealing	0	Not applicable
Arabian Drilling		
real property	0	Not applicable
other tangible property	0	Not applicable
Alhuseini		
other tangible property	1,100,000	2 August 1990
Saudi Automotive		
real property - Jadidat Station	38,718	29 September 1990[18]
real property - Riyadh Workshop	12,354	8 February 1990
real property - Um-al-Hammam Station	0	Not applicable
other tangible property	0	Not applicable
loss of rent	81,138	17 March 1991[19]
Idemitsu		
real property	0	Not applicable

* The recommended compensation with respect to OCC's interest losses is as stated in paragraphs 60 and 66, supra. Interest will be calculated on such award from the interest start date stated in Table 26, supra.

177. All claim figures in the body of this report are net of any claim preparation cost claims advanced by the claimants. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of the claim preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs.

XV. RECOMMENDATIONS

178. The following table summarizes net claims and the Panel's recommended awards.

Table 27. Summary showing net claims and the Panel's recommended awards

Claimant		Net claim*	Recommendation (Original currency)	Recommendation (US$)
Elf Lubrifiants	(FRF)	174,085	0	29,000
Van der Sluijs	(US$)	1,037,000	0	0
Mutraco	(NLG)	64,410	0	0
Petrolexportimport	(US$)	2,729,204	0	0
	(ROL)	2,027,716,177	0	0
Orient Catalyst	(JPY)	215,700,906		
	(US$)	86,531		80,206 **
Anchor Fence	(US$)	172,315	111,972	111,972
Caltex	(US$)	201,926	0	0
Arabian Drilling	(US$)	53,334	0	0
Alhuseini	(US$)	2,800,000	1,100,000	1,100,000
Saudi Automotive	(SAR)	5,661,250	495,125	132,210
Idemitsu	(JPY)	13,366,390	0	0
Totals	(US$)	7,080,310	1,211,972	1,321,178
	(ROL)	2,027,716,177	0	0
	(JPY)	229,067,296	0	0 **
	(NLG)	64,410	0	0
	(FRF)	174,085	0	0
	(SAR)	5,661,250	495,125	132,210
	Total recommendation (US$)			1,453,388 **

* The total in United States dollars of amounts claimed in this instalment, with claims stated in currencies other than United States dollars converted at the August 1990 average monthly rate as reported in the United Nations Monthly Bulletin of Statistics, is US$112,699,545. Petrolexportimport's claim accounts for US$105,294,514 of that amount.

** This amount does not reflect the Panel's recommended award with respect to OCC's claimed interest losses. The Panel recommends that such award be calculated as described in paragraphs 60 and 66, supra.

Geneva, 17 November 1999

(Signed) Mr. Allan Philip
Chairman

(Signed) Judge Bola Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Notes

[1] "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

[2] "Criteria For Additional Categories of Claims" (S/AC.26/1991/7/Rev.1) ("decision 7").

[3] "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a Cause" (S/AC.26/1992/15), para. 6 ("decision 15"). Decision 15 emphasizes that for an alleged loss or damage to be compensable, "the causal link must be direct" (para. 3).

[4] Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9) ("decision 9"). Decision 9 discusses the three main general categories of loss types that prevail among the category "E" claims: losses in connection with contracts, losses relating to tangible assets and losses relating to income-producing properties.

[5] Decision 15, para. 5.

[6] "United Nations Compensation Commission Claim Form for Corporations and Other Entities (Form E): Instructions for Claimants", ("Form E") para. 6. This requirement is repeated at article 35, para. 1 of the Rules.

[7] Form E, para. 6.

[8] "Awards of Interest" (S/AC.26/1992/16).

[9] On 23 March 1994 CTTC assigned its right to advance this claim to Caltex.

[10] Of this amount, US$969,185 represents transportation, installation and commissioning costs.

[11] Decision 7, para. 21.

[12] Decision 9, para. 6.

[13] The United Nations Monthly Bulletin of Statistics Currency conversion rates are the mid-point rates prevailing for each month.

[14] "Awards of Interest" (S/AC.26/1992/16).

[15] (S/AC.26/1998/7), paras. 276-287.

[16] This date is the estimated mid-point of the period over which OCC's interest losses were incurred.

[17] This date is the estimated mid-point of the period over which OCC's non-interest losses were incurred.

[18] This date is the approximate date when the Jadidat Station was occupied by the Allied Coalition Forces.

[19] This date is the estimated mid-point of the period over which Saudi Automotive's loss of rent was incurred.